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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 FOUR SEASONS HOTEL LAS VEGAS,

11 Plaintiff,

12 v.

13 GET-A-WAY TRAVEL, INC. d/b/a  
14 GTI/CARLSON WAGONLIT TRAVEL,  
15 GTI CORPORATE TRAVEL d/b/a  
16 GTI/CARLSON WAGONLIT TRAVEL,  
17 GENR8TNEXT, LLC, and DOES I-X,  
inclusive,

Defendants.

Case No. 2:06-CV-00077-KJD-RJJ

**ORDER**

18 Presently, the Court has before it Defendant Get-A-Way Travel, Inc. d/b/a GTI/Carlson  
19 Wagonlit Travel, GTI Corporate Travel d/b/a GTI/Carlson Wagonlit Travel's ("GTI") Motion to  
20 Dismiss (#17). Plaintiff filed a response in opposition (#26), to which Defendant GTI filed a reply  
21 (#29).

22 **I. Background.**

23 In September 2003, Robin Middleton, Sales Manager for the Four Seasons Hotel Las Vegas  
24 (hereinafter "Four Seasons" or "Plaintiff") and Bonnie Simon, President of Defendant GTI  
25 negotiated terms for an event to be held at the Four Seasons in April 2005. These negotiations  
26 culminated into a contract, the terms of which are memorialized in the "Group Event Agreement"

1 dated September 24, 2003. The Group Event Agreement states that it “constitutes the entire  
2 agreement between GenR8Tnext and GTI Carlson Wagonlit Travel (the ‘Patron’) and the Four  
3 Seasons Hotel Las Vegas (the ‘Hotel’) regarding arrangements for the GenR8Tnext (the ‘Event’) to  
4 be held over the dates of April 10 to April 17, 2005, inclusive.” Ms. Middleton signed the agreement  
5 on September 24, 2003, as the representative of the Four Seasons. On September 25, 2003, Ms.  
6 Simon signed the agreement on behalf of Defendant GTI. Above the signature line for Ms. Simon,  
7 the agreement states “GTI Carlson Wagonlit Travel (the ‘Patron’).” Mr. Maroon signed the  
8 agreement on September 26, 2003, on behalf of GenR8Tnext. Additionally, each page of the Group  
9 Event Agreement required the “Patron’s Initials.” The bottom of each page has been initialed with a  
10 “PM” and “BS” presumably for Peter Maroon and Bonnie Simon. Additionally, the agreement  
11 contains many handwritten interlineations which are presumably approved by the parties given the  
12 initials of the three previously mentioned signers.

13 In the agreement, “the Patron” agrees to contribute to expected banquet revenue, complete a  
14 credit application if requested, give prior written notice to the Four Seasons upon cancellation of the  
15 event, pay liquidated damages upon cancellation, and pay all damages resulting from negligence or  
16 misconduct. As noted previously, the signature page of the agreement names Defendant GTI as “the  
17 Patron.” Notwithstanding the signature page and the initials at the bottom of the pages, the  
18 agreement contains some ambiguity concerning Defendant GTI’s status. Of particular note is a  
19 handwritten interlineation contained in the section of the agreement discussing the possibility of a  
20 commission. The agreement states that the “Agency of Record” is the only entity which will be paid  
21 a commission for the event. Above “Agency of Record” the parties have interlined “GTI.” The  
22 initials of Bonnie Simon, Robin Middleton and Peter Maroon, accompany this handwritten  
23 interlineation.

24 The event contemplated by the agreement was held April 10-17, 2005. Plaintiff sent an  
25 invoice to Defendants for the amount owed. Despite Plaintiff’s demands, Defendants have failed to  
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1 pay the total amount due to Plaintiff for services provided under the Group Event Agreement. As of  
 2 August 25, 2005, Plaintiff was owed \$259,810.82 in principal. Pursuant to the agreement, invoices  
 3 outstanding for more than 30 days bear interest at a rate of 18% per annum. Based on the unpaid  
 4 invoice, Plaintiff filed the instant Complaint alleging two claims against all Defendants: (1) Breach  
 5 of Contract, and (2) Breach of the Implied Covenant of Good Faith and Fair Dealing. Defendant GTI  
 6 has now filed a motion to dismiss arguing that the Court lacks personal jurisdiction over it and that  
 7 Plaintiff has failed to state a claim upon which relief may be granted.

8 **II. Analysis.**

9 Where, as here, there are no applicable federal statutes governing personal jurisdiction, the  
 10 district court applies the laws of the state in which its sits. See Dole Food Co. v. Watts, 303 F.3d  
 11 1104, 1110 (9th Cir. 2002). Nevada's long-arm statute bestows the broadest grant of personal  
 12 jurisdiction consistent with due process. See Nev. Rev. Stat. § 14.065(1). Because Nevada's long-  
 13 arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional  
 14 analyses under state law and federal due process are the same. See Schwarzenegger v. Fred Martin  
 15 Motor Co., 374 F.3d 797, 800-01 (9th Cir. 2004); Trump v. Eighth Jud. Dist. Ct., 109 Nev. 687, 698,  
 16 857 P.2d 740, 747 (1993).

17 “For a court to exercise personal jurisdiction over a nonresident defendant, that defendant  
 18 must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction  
 19 ‘does not offend traditional notions of fair play and substantial justice.’” Schwarzenegger 374 F.3d  
 20 at 801 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). The court gains personal  
 21 jurisdiction over nonresidents by either (1) “general jurisdiction,” which arises where the defendant's  
 22 activities in the forum state are sufficiently “substantial” or “continuous and systematic” to justify the  
 23 exercise of jurisdiction over it even if the cause of action is unrelated to those contacts, or (2) specific  
 24 jurisdiction,” which arises when a defendant's contacts with the forum state have given rise to the  
 25 claim in question. See Gator.Com Corp. v. L.L. Bean, Inc., 341 F.3d 1072, 1076 (9th Cir. 2003).

1       In its Motion to Dismiss, Defendant GTI simply argues that Plaintiff failed to allege facts  
2 necessary to confer personal jurisdiction over it. The Complaint is indeed quite brief. In its  
3 Opposition, however, Plaintiff outlines the many contacts Defendant GTI had with Nevada to allow  
4 this Court to maintain personal jurisdiction over this Defendant. Notably, Defendant GTI's Reply  
5 fails to address or refute any of the arguments or events outlined in Plaintiff's Opposition. The Court  
6 accordingly finds that Defendant GTI has abandoned this argument. Moreover, the facts presented in  
7 the Opposition appear to justify the Court's exercise of personal jurisdiction over Defendant GTI.

8       Defendant GTI next argues that Plaintiff has failed to state a claim against it upon which  
9 relief may be granted. A dismissal for failure to state a claim pursuant to Rule 12(b)(6) is a ruling on  
10 a question of law. See Clegg v. Cult Awareness Network, 18 F.3d 752, 754 (9th Cir. 1994). In  
11 reviewing a Rule 12(b)(6) motion, the court "must construe the complaint in the light most favorable  
12 to the plaintiff and must accept all well-pleaded factual allegations as true." Shwarz v. United States,  
13 234 F.3d 428, 435 (9th Cir. 2000). Review is typically limited to the contents of the complaint. See  
14 Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). A complaint should not be  
15 dismissed for failure to state a claim unless it appears beyond a reasonable doubt that Plaintiff can  
16 prove no set of facts in support of its claims that would entitle it to relief. See Sprewell, 266 F.3d at  
17 988.

18       If a court considers evidence outside the pleadings, it must convert a Rule 12(b)(6) motion to  
19 dismiss into a Rule 56 motion for summary judgment. See United States v. Ritchie, 342 F.3d 903,  
20 907 (9th Cir. 2003). However, a court may consider certain materials that are either attached or  
21 incorporated by reference in the complaint as well as matters of judicial notice without converting a  
22 motion to dismiss into a summary judgment motion. See id. at 908. If documents are physically  
23 attached to the complaint, then a court may consider them if their authenticity is not contested and  
24 the plaintiff's complaint necessarily relies on them. See id. A court may also treat certain

1 documents as incorporated by reference if the complaint refers extensively to the document or the  
 2 document forms the basis of the plaintiff's claim. See id.

3 Attached as Exhibit 1 to Plaintiff's Complaint is a copy of the Group Event Agreement dated  
 4 September 24, 2003. Additionally, the parties have submitted several documents in the course of  
 5 addressing Defendant GTI's Motion to Dismiss. Attached to Plaintiff's Opposition are copies of a  
 6 Credit Card Guarantee from Defendant GeneR8Tnext; a Credit Card Authorization from  
 7 GeneR8Tnext; three amendments to the Group Event Agreement dated September 24, 2003, January  
 8 14, 2005, and March 24, 2005; an Invoice dated August 25, 2005; and the Affidavit of Robin  
 9 Valenta.<sup>1</sup> Defendant GTI attached to its Reply copies of the Affidavit of Bonnie Simon as well as an  
 10 interlined version of the Group Event Agreement dated September 4, 2003.

11 Given all the attached documents, the Court is presented with the option of addressing  
 12 Defendant GTI's Motion to Dismiss (with the limitations on what documents can be reviewed) or  
 13 transforming it into a motion for summary judgment. The Court elects to limit its review to one for a  
 14 motion to dismiss. Although such review is typically limited to the contents of the Complaint, the  
 15 Court will also consider the Group Event Agreement dated September 24, 2003. A copy of the  
 16 agreement was physically attached to the Complaint and no party has challenged its authenticity. See  
 17 id. More importantly, the Complaint relies on the agreement and it forms the basis of Plaintiff's  
 18 claims. See id.

19 After reviewing the Complaint and Group Event Agreement dated September 24, 2003, the  
 20 Court finds that dismissal is inappropriate at this stage of the litigation. Understandably, Defendant  
 21 GTI's full name, Get-A-Way Travel, Inc. d/b/a GTI/Carlson Wagonlit Travel, GTI Corporate Travel  
 22 d/b/a GTI/Carlson Wagonlit Travel, strongly suggests that this Defendant was the travel agent for  
 23 Defendant GenR8Tnext. Additionally, the handwritten interlineation of "GTI" above the term

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 25 <sup>1</sup>Nowhere does Plaintiff explain who Robin Valenta is in relation to the Robin Middleton  
 26 who signed the Group Event Agreement. Presumably, they are the same person.

1 “Agency of Record” (with the confirming initials of the three signatories) also strongly suggests that  
2 Defendant GTI was merely the agent of Defendant GenR8Tnext. Nevertheless, several facts suggest  
3 that Defendant GTI was a liable party under the agreement. Defendant GTI signed the agreement as  
4 “the Patron” which correspondly required this Defendant to perform certain duties outlined therein,  
5 including responsibility of payment. Bonnie Simon’s initials appear at the bottom of every page in  
6 the area reserved for the “Patron’s initials.” Nowhere in the agreement was it stated that Defendant  
7 GTI executed it on behalf of, or as an agent for, Defendant GenR8Tnext. The Agreement can be read  
8 to support either party’s position. Accordingly, Defendant has not met its heavy burden of showing  
9 that Plaintiff can prove no facts in support of its claims that would entitle it to relief.

10 **III. Conclusion.**

11 Defendant GTI’s motion must be denied. Defendant abandoned its argument that the Court  
12 lacked personal jurisdiction over it. Moreover, the evidence presented by Plaintiff suggests the  
13 contrary finding. Finally, Defendant GTI has failed to met its burden regarding its Rule 12(b)(6)  
14 argument. A review of the Complaint and Group Event Agreement dated September 24, 2003,  
15 reveals that Plaintiff has stated claims (Breach of Contract and Breach of the Implied Covenant of  
16 Good Faith and Fair Dealing) upon which relief may be granted.

17 Accordingly, IT IS HEREBY ORDERED that Defendant GTI’s Motion to Dismiss (#17) is  
18 **DENIED.**

19 DATED this 5th day of July 2006.

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Kent J. Dawson  
United States District Judge